Scott Turner

April 12, 2013

ATTN: International Tax Reform Working Group

Dear Representative Nunes and Blumenaur,

"Numbering well over one million and representing the United States around the world in all aspects of commerce, these overseas Americans constitute an important national asset. Recently, however, U.S. law governing the rights and obligations of these citizens has fallen subject to increasing criticism – first, as to its fairness; and second, as to its wisdom, at a time when ***America's international economic competitiveness, which depends heavily on effective business activity by U.S. citizens abroad****, is under severe challenge. I therefore deemed it important that the policy implicit in this diverse body of law be subjected to a fresh and comprehensive examination."*

– Senator George McGovern July 2, 1980 – From: U.S. Law Affecting Americans Living and Working Abroad

Senator McGovern's sentiments could be echoed almost 35 years later. The situation is more urgent with almost seven million U.S. persons abroad. It is essential that US policy toward its citizens abroad be subjected to a fresh and comprehensive examination. ***As Senator McGovern noted, US international economic competitiveness is dependent on effective business activity by US citizens abroad****."*

The relationship between U.S. citizens abroad and the international competitiveness of U.S. companies has been noted by the U.S. Chamber of Commerce. The U.S. Chamber of Commerce, in its submission to this committee supports a re-examination of the "citizenship-based taxation" – the system under which U.S. citizens abroad are taxed.

http://waysandmeans.house.gov/uploadedfiles/u.s._chamber_of_commerce_wg_comment.pdf

"As with corporations, ***the United States has long taxed the foreign earned income of its citizens residing abroad****, resulting in double taxation and disincentivizing the hiring of U.S. citizens. Studies have shown that U.S. expatriates employed as managers in foreign affiliates of American worldwide companies are a powerful driver of U.S. exports,* ***so this practice significantly undermines the global competitiveness of U.S. exporters. No other country taxes its citizens working abroad,*** *and the any transition to a territorial tax system should take this into consideration and end this damaging practice."*

U.S. citizens abroad are ambassadors for the United States and are the “eyes and ears” on the ground for U.S. corporations.

Furthermore, U.S. citizens abroad are unofficial ambassadors for the United States of America throughout the world. The way that the United States is perceived throughout the world is largely a function of the way that U.S. citizens abroad are perceived. Any unfair treatment of U.S. citizens abroad would invite the inference that the United States is an “unfair nation”.

In the spring of 2012 Democrats Abroad encouraged U.S. citizens abroad to report some of their stories. Those reported may be found at:

http://www.expattaxstory.us/

I invite the Committee to read these stories and draw appropriate inferences.

I urge the International Taxation Committee of the Ways & Means Committee for Tax Reform to adopt the American Citizen’s Abroad (ACA) proposal for reform to Residency-based taxation (RBT) rather than Citizen-based taxation. See link:

http://americansabroad.org/files/6513/6370/3681/finalsubrbtmarch2013.pdf

The rest of this submission is to reinforce the submission of ACA which demonstrates that the current model of citizenship-based taxation is:

- Harmful to the economy of the United States
- Harmful to the economies of countries where U.S. citizens abroad live
- Harmful to the image of the United States around the world
- So harmful to U.S. citizens attempting to live abroad that many must considering renouncing their U.S. citizenship[to protect themselves from the “Prison of citizenship-based taxation” (including loss of life opportunities and unaffordable compliance costs)

Citizenship-based taxation also hampers the ability of US corporations to compete outside the US.

I fully support the ACA proposal that the United States join the world in moving to a system of RBT (residence based taxation).

In addition, I would like to offer my perspective on this issue – a perspective that is rooted in actually trying to maintain personal compliance with U.S. tax law while residing outside the United States.

It would behoove the United States to recognize the effects of “citizenship-based taxation” on the governments of other countries, the citizens of other countries, and the societies of other countries. Furthermore, I invite you to consider how “citizenship-based taxation” is harmful to the economy of the United States and to the diplomatic relations of the United States. Finally, I ask you to consider how the implementation of FATCA will exaggerate the worst aspects of “citizenship-based taxation” and place the United States in conflict with its closest trading partners.

In summary I invite your committee to conclude that:

1. There is NO good reason to retain “citizenship-based taxation”;
2. There are many good reasons to abolish “citizenship-based taxation” and join the rest of the world with the (or a similar) system of “residence based taxation” suggested by American Citizens Abroad.
3. A system of “residence based taxation” will benefit the United States as a country, it’s corporations and all of its citizens.

I anticipate that this will be one of the final submissions received. In compiling my submission I have had the benefit of reading some of the other submissions and will (from time to time) refer to them as found here:

http://waysandmeans.house.gov/taxreform/workinggroups.htm

My Personal Background

I am nearing retirement age and permanently left the United States before my teen years when my family moved to Canada. Since that time I have never lived in the United States, have made no income in the United States, have no property in the United States, rarely visit the United States and have no other connections to the United States. I do however pay considerable taxes in Canada and like other responsible people have lived a life characterized by an attempt at responsible and lawful financial planning. For the record, I am one of the small number of U.S. citizens abroad, who has, at tremendous personal and financial cost, been tax compliant. Furthermore, (and I want this to be clearly understood) the differences between Canadian and U.S. tax law have resulted in my paying massively more taxes than I would have paid, had I been a taxpayer of only one country.

Payment of taxes: U.S. Persons in Canada are, in certain circumstances, subject to massively more taxes for reasons that include:

- Some things are taxed in both countries but are taxed differently in each country (example: the **incredibly punitive** U.S. tax treatment of **Canadian** PFIC mutual funds which can result in U.S. taxes that can exceed the gains);
- Some things are not taxed in Canada but are taxed in the U.S. (examples include sale of a principal residence and certain kinds of retirement planning vehicles)
- Canada is a country that imposes very high sales taxes. For the purposes of any "foreign tax credits" the U.S recognizes only income taxes.

A minimal amount of research will uncover other examples. My point is – and this needs to be understood – that U.S. persons abroad are subjected to the worst of two tax systems. Double taxation is a reality. Although this may be unintentional, it is also an example of "the law of unintended consequences". Virtually every change in U.S. tax law, under a system of citizenship-based taxation, has an unintended effect on the taxpayers of other countries.

The primary reason for double taxation is that U.S. persons abroad pay taxes to both their country of residence and to the United States. They are subject to exactly the same U.S. tax laws as those resident in the United States. Assuming the desirability of citizenship-based taxation, does it make sense to subject U.S. persons abroad to the same rules as U.S. citizens resident in the United States?

I also respectfully note that many people believe that the combined effect of the U.S. Canada tax treaty, foreign tax credits, and the Foreign Earned Income Exclusion operate to prevent double taxation. The combined effect of these things does **NOT** (contrary to conventional wisdom) in most/all cases solve the problems of double taxation.

For example, consider the following description of the possible effects of Obamacare (a significant U.S. tax change) on the retirement plans of Canadian citizens who the IRS deems to be U.S. persons:

http://www.moodystax.com/new-us-tax-law-may-negatively-affect-canadian-retirement-plans/

… to present the Canadian perspective on the proposed regulations under IRC 1411, the provision that implements the 3.8% tax on net investment income that was enacted as part of the US health care overhaul in 2010. The IRS had requested public comments on the proposed regulations issued on December 5, 2012. Moodys submitted a comment articulating a number of our concerns.

…

Two areas of greatest concern are the treatment of Canadian RRSPs and pensions and whether foreign tax credits may be used to offset the NII. Unless the proposed regulations are modified a new 3.8% tax will likely apply to US citizens resident in Canada or Canadians who are resident in the US on the following types of income:

1. *Income generated in Canadian retirement plans (including RRSPs, DPSPs, LIRAs, TFSAs, etc.), even though this income is not taxable under the Canada-US Treaty;*
2. *Even if #1 does not apply, distributions from Canadian retirement plans will likely be subject to the tax;*
3. *Payments made to retirees under the Canada Pension Plan ("CPP"); and*
4. *Recipients of government pensions.*

Further, unless there are changes to the proposed regulations, Canadian snow birds that rely on the Treaty to "tie-break" back to Canada may have their net investment income subject to this tax.

Although the hearing was an opportunity for practitioners to speak to the IRS, rather than the other way around, it was possible to get a sense of where things might be heading based on their follow-up questions and informal discussions before and after the hearing. It appears that the finalization of the regulations is likely to move quickly.

Treasury appeared to be considering a few possible avenues, such as allowing a deduction of foreign taxes against the NII. (It appears that there are two camps of opinion within the IRS as to whether the NII is foreign tax creditable.) The IRS also appears sympathetic to the double-tax concerns that may arise under the interaction of the NII with US tax treaties, but seems uncertain as to how to technically resolve the dilemma.

The Crippling Costs of U.S. Tax Compliance – Forms, forms and more forms!

Furthermore, as has been consistently documented (in other submissions) the administrative cost of U.S. tax compliance is crippling. I will no longer be able to afford to pay these costs (they are currently in the area of $3000 per year) as I move into my retirement years. As a result, I may be forced to renounce my U.S. citizenship. U.S. citizens abroad are not only subjected to U.S. tax rules but are subjected to a complex set of "reporting requirements" (FBAR, FATCA, Foreign Trusts, etc.). The forms are very complex and cannot be completed without the assistance of professional help. This help is hard to find (even in Canada) and very expensive. Failure to complete the forms accurately can result in "life altering" penalties. Although (in theory) the requirements of these forms apply to U.S. residents, in practice all U.S. citizens abroad have bank accounts outside the U.S. **Therefore, in practice U.S. persons abroad are subjected to both:**

1. The rules for calculating U.S. taxes; but also
2. A set of complex and expensive reporting rules **that (in practice) apply only to U.S. persons abroad.**

On this point I invite you to consider the comments of Marcio Pinheiro of April 10, 2013.

http://waysandmeans.house.gov/uploadedfiles/pinheiro_wg_comments.pdf

"I am a dual citizen. I lived and worked in the USA thirty years and I am very proud of being an American Citizen. About ten years ago I decided to come back to my country of origin. Now, 80 years old and with failing health I regret having become an US citizen. I had an USA CPA doing my US taxes until 2008. He never told me about FBARS. I learned about them by chance when visiting my two daughters and son who live in the USA. Since then my life has become a nightmare. I have spent sleepless nights trying to comply with the demands being placed on me and the threats of stiff penalties that do not apply to Americans living in the mainland. I have spent a lot of time and money trying to find out what I should do to comply. My situation has become so impossible that I don't know what to do."

On the seriousness of compliance costs in general, see the comments of Lloyd Fletcher:

http://waysandmeans.house.gov/uploadedfiles/fletcher_wg_comments_redacted.pdf

"I spend thousands of dollars each year on professional tax advice to ensure that I navigate the tax codes correctly, as the consquences of even inadvertent error could be ruinous. This is not because my financial affairs or investments are complex: they are not. I draw a modest college teaching salary, supplemented by straightforward interest, dividents and capital gains, but the equivalent of my wife's entire annual (part-

time) salary is consumed by tax advice and preparation fees. Effectively, she has to work just so that we can file US tax returns for me and my children. Although I already spend many hours on filing as an overseas American (including the duplicative and intrusive FATCA and FBAR), I could not cope without professional advice, due to the knowledge required to deal with the system of US taxation imposed on top of the system of the country in which I am resident."

Life as a U.S. citizen abroad is very difficult. Like Mr. Pinheiro, I have the very deep, life altering scars to prove it. Those U.S. citizens abroad who are tax compliant will agree that citizenship-based taxation is one of the biggest parts of their lives influencing EVERY part of their life. I now invite you to consider this problem in a more objective way. I have divided this into logical parts – Part A to Part H

Part A: U.S. Citizenship-based Taxation – Scope and Application

The History of U.S. Citizenship-based Taxation

In October of 2011, the U.S. Ambassador to Canada, David Jacobson commented to a Canadian audience, on the topic of Canada U.S. relations, that:

http://canada.usembassy.gov/ambassador/news-and-speeches/18-october-2011-ambassador-jacobsons-remarks-to-the-canadian-club.html

"The third coffin sighting arises from recent media coverage of an issue that has been around for about 100 years, since the United States imposed an income tax in 1913. From the beginning, my country has taxed the incomes of American Citizens no matter where they live, no matter where they earn their livings.

This is different from the way Canada -- and some other countries -- do it."

The truth is that only the U.S. and the North African Nation of Eritrea, use a system of citizenship-based taxation. The second truth is that the U.S. has **always** used a system of citizenship-based taxation.

The fact that it has **always** used citizenship-based taxation suggests that the appropriateness of citizenship-based taxation has NEVER been considered. It is high time to consider citizenship-based taxation as an issue. Can it be justified the modern, global world?

What Is "Citizenship-based Taxation"? Ambassador Jacobson has severely understated the reality!

Ambassador Jacobson implies that "citizenship-based taxation" is a private matter between the U.S. government and U.S. citizens. It is far more!

U.S. tax law requires "U.S. persons" to comply with the tax laws of the United States. As "U.S. persons" are currently defined they include:

- Those born in the United States (U.S. citizens)– regardless of whether they live or have ever lived in the U.S.;
- The offspring of "some" U.S. citizens born abroad;
- Anybody who was ever given the right to live permanently in the United States ("Green Card Holder") even if they do NOT live in the United States;
- Those who spend more than a prescribed number of days in the U.S.

This definition includes citizens of other countries who are also U.S. citizens.

For example, it is believed that there are approximately one million "U.S. persons" in Canada. The vast majority are Canadian citizens, who also meet the test of "U.S. person".

Citizenship-based taxation, when applied to many "Green Card" holders is a system that requires:

- Non U.S. residents; and
- Non U.S. citizens

to pay tax on income **neither earned nor connected with the United States** and to file expensive "information returns. In the case of Green Card Holders, this means that the U.S. is levying taxes on citizens and residents of other countries WHO ARE NOT U.S. CITIZENS!

The term "citizenship-based taxation" is highly misleading. "Citizenship-based taxation" is really "extra-territorial taxation". How would the U.S. respond if China wanted to tax United States citizens who were resident in the United States simply because they were born in China?

Part B: Effects of "Citizenship-based Taxation" On The Lives of U.S. Persons Abroad

The rules that are applied to these "non-U.S. residents" are exactly the same (FEIE excepted) as the rules that apply to U.S. residents.

From the perspective of the United States, it is taxing people it considers to be "U.S. persons". From the perspective of Canada, the United States is taxing Canadian citizens who are resident in Canada. This prompted Canadian Finance Minister Jim Flaherty, In September of 2011, to tell the IRS to **"Back off"** on Canadian taxpayers.

http://business.financialpost.com/2011/09/16/flaherty-takes-on-irs-over-tax-crackdowns-in-canada/

Furthermore, this extra-territorial taxation is applied using U.S. rules. "U.S. Rules" include both (1) "tax" and (2) "information return" requirements. Each requirement imposes severe difficulties on those subject to the taxation.

(1) Tax Requirements – Money Owed To The U.S. Government

U.S. tax rules as applied to U.S. citizens abroad do NOT respect the tax rules of the other country. For example: (with the sole exception of the RRSP) there are retirement plans in Canada that are given special status by the Canadian Government but are not recognized as retirement plans by the IRS. U.S. tax rules do NOT respect that "tax deferral" is an important principle of Canadian retirement planning. U.S. tax rules do NOT respect the Canadian rule that a "principal residence" is exempt from taxation. There are many more examples of "lack of respect" for Canadian law.

Therefore, to apply U.S. tax rules to people trying to live in Canada is to:

1. Make it difficult for the individual to engage in meaningful retirement and financial planning (retirement vehicles in Canada are often subject to U.S. taxation); and
2. Potentially making those Canadian residents who are subject to U.S. tax laws a burden to the Canadian government in their retirement years.

(2) Information Return Requirements – Information that must be provided to the U.S. Government

FBARs, FATCA 8938, Foreign Trust Forms (3520) and the attempt to impose FATCA on foreign banks have made people wary of dealing with U.S. persons. The combined effect of these rules is to require U.S. persons to divulge information about "non-U.S. citizens" to the IRS.

These disclosure requirements have made "non-U.S. persons" reluctant to:

- Hire U.S. person employees
- Enter into partnerships with U.S. persons
- Allow U.S. persons to be shareholders of small companies
- Adopt babies born in the U.S.
- Marry U.S. citizens

The problems of "marriage between a U.S. citizen abroad" and a non-U.S. spouse have been well documented.

The non-U.S. citizenship spouse is often reluctant to have his/her financial information reported to the IRS. On this topic, I refer you to the submissions from American Citizens Abroad and to the April 10, 2013 submission of the Federation of Women's Clubs Overseas:

http://waysandmeans.house.gov/uploadedfiles/federation_of_womens_clubs_overseas_wg_comments_redacted.pdf

"My complaint with the current citizenship-based taxation currently practiced by the US government stems from my marriage to a UK national. Because of the reporting requirements imposed by the US on individuals and foreign financial institutions, it makes no financial sense for me to share bank accounts, UK/EU-based investments, real estate or retirement funds with my husband
.
My husband and I have no joint financial accounts and my name is not on the house in which we currently reside. These are basic things that married couples residing in the US take for granted but are being denied to us because I have elected to live, work, and continue to pay US tax from outside of the US. I am paying U.S. tax but I am not receiving the same rights or services as a resident taxpayer.

Since my name is not on any of my husband's UK accounts or on our home, what am I going to do if anything were to happen to my husband? My husband has worked hard to provide a home, life insurance and a pension for me and for his son but the U.S. will view those sources of income as foreign investments and tax me accordingly, at a far higher rate of tax than any widow residing in the US would have to pay."

There are also numerous examples of non-U.S. citizens being unwilling to include U.S. citizens in their affairs. Note the following comment by David Barder:

http://waysandmeans.house.gov/uploadedfiles/barder_wg_comments.pdf

"Furthermore, what has hit me the hardest is a particular situation when I was attending a part time MBA program in Switzerland

One of the many goals of an MBA student, including mine, is to start their own business So, when I entered into a business plan group to draft a potential business proposal, (which all members where non US citizens except for me), I was told that they preferred that I withdrew my participation due to the FATCA compliance burden and account disclosures that I would face and be placed upon the group if the business plan was implemented

This has left me at a significant disadvantage compared to my European classmates.

All these points have happened not due to my financial situation, work history or own fault, but due to the over burdensome and unfair reporting requirements and regulation that accompany Citizenship base taxation."

The imposition of FATCA has made it very difficult for U.S. citizens abroad to maintain and open bank and investment accounts. It is now too expensive and risky for foreign banks to deal with U.S. person clients. For example:

http://waysandmeans.house.gov/uploadedfiles/andrews_wg_comments_redacted.pdf

"My German bank closed my investment account because it's too onerous for them to comply with IRS reporting requirements for American citizens, so I can't invest in stocks or bonds.

To put it more colorfully: just after the markets took a heavy dip, the bank wrote me to tell me they were liquidating them and putting the proceeds in my savings account. I was forced to sell off assets just after a stock market crash because my German bank didn't feel like complying with American regulations."

and:

http://waysandmeans.house.gov/uploadedfiles/ward_wg_comments_redacted.pdf

"I personally have had a US brokerage account of 20+ years standing closed by Wells Fargo Advisors because, quite frankly, they don't even know what is going on and they are running scared with overseas resident clients. This has caused me untold inconvenience and stress"

Bottom Line: Citizenship-based taxation should **NOT** be understood to be a "minor" imposition on the lives of U.S. citizens abroad. It is a very significant factor in their lives. In many cases, (even the most Patriotic of U.S. citizens abroad) are forced to choose between their non-U.S. citizen spouse and retaining U.S. citizenship. The problems of U.S. tax compliance are forcing some to consider renouncing their U.S. citizenship. Is this really what U.S. tax laws are intended to do?

Part C: The effects of "citizenship-based taxation" on the countries where U.S. citizens reside

First, NO country can tolerate a situation where its residents are subject to an additional set of taxes from another country. As previously noted, at a bare minimum, U.S. citizenship-based taxation operates to prevent U.S. persons from effective retirement and financial planning. Special rules apply to "U.S. persons". In fact, financial planning for U.S. citizens abroad is a growth industry. U.S. citizens abroad simply cannot plan for retirement in their country of residence in the way that non-U.S. persons can.

Second, if the statistics are to be believed the vast majority of U.S. citizens abroad are NOT compliant with their U.S. tax and information obligations. Before 2011 the IRS had no attempt to educate U.S. citizens abroad about their U.S. tax obligations. It is difficult for them to come into compliance without incurring substantial costs. Since 2009 the IRS has been waging a "reign of terror" on non-compliant U.S. citizens abroad. For the most part, non-compliance on the part of U.S. citizens abroad has not been willful. For the most part, non-compliant U.S. citizens abroad owe little or no taxes to the U.S. Yet, there is NO program that will allow U.S. citizens abroad to correct their errors without the threat of life altering penalties. Should these penalties be realized, they will come out of whatever retirement savings exist. Again, this is at a direct cost to the economy of the host country.

Part D: The Effects of Citizenship-Based Taxation On The U.S. Economy

This issue has been explored in the excellent submission by Roger Conklin posted on April 8, 2013. I invite you to reread Part 2 where he explains: "How Citizenship-Based Taxation Destroys The Competiveness of US Citizens For Overseas Deployment:" – page 7. I cannot say it better than he has said it.

http://waysandmeans.house.gov/uploadedfiles/conklin_wg_comments.pdf

The bottom line is that because of "citizenship-based taxation" U.S. citizens abroad are simply too expensive to employ. Mr. Conklin has also argued that the U.S. trade deficit is the result of "citizenship-based taxation".

Part E: The Effects Of Citizenship-Based Taxation On How The Rest Of The World Perceives The United States

In 2009 the U.S. began it's war on Offshore Tax Evasion and Offshore Accounts. The Obama administration has adopted the following reasoning:

"Many tax evaders use Bank Accounts outside the United States."

It then incorrectly reverses the reasoning to be:

"Bank Accounts outside the United States are used for tax evasion."

With this fallacious reasoning (logical fallacy of affirming the consequent):

1. The U.S. government has made criminals out of the vast majority of U.S. citizens abroad. After all, they have all have bank accounts located outside the United States.
2. Made non-compliant U.S. citizens abroad afraid to come into compliance;
3. Created an enormous amount of resentment on the part of U.S. citizens abroad toward the United States. This is a great tragedy. U.S. citizens abroad are one of America's greatest resources. They should be "ambassadors for the United States". They should not be voices of resentment, anger and hostility toward the United States.

As Marie Cashion, while acknowledging her love for the United States, says in her submission of April 5, 2013:

http://waysandmeans.house.gov/uploadedfiles/cashion_wg_comments_redacted.pdf

"There are approximately 7 million US citizens living outside the country (In Canada it is estimated that one in thirty people living permanently in the country have US citizenship.) All 7 million of us are in some sense ambassadors for our country and because of the current tax policy many are not very positive ones. Does the US really need millions of citizens living outside its borders who are confused, bewildered, hostile and angry at their country!

Rather than feeling blessed to be Americans some feel cursed. I know a young Dad who several years ago registered his infant daughters as US citizens. Recently he said to me that now he feels as if he has passed some horrible genetic disease on to his children! Personally I have had Canadians express their condolences to me because I am a US citizen."

It is obvious that this is not good for the United States. The cost of anger and resentment is very high!

Part F – Citizenship-based Taxation Does NOT Bring In Significant Revenue For The United States and it is a costly system for the IRS to administer

As noted in the submission from American Citizens Abroad:

http://waysandmeans.house.gov/uploadedfiles/american_citizens_abroad_wg_submission.pdf

Citizenship-based taxation in no way furthers the national interests of the U.S.

"The current Citizenship based taxation (CBT) is an ineffective mode of raising taxes on Americans abroad. It brings little money to the Treasury (ACA estimates $3 to $6 billion annually) as most of the tax base is preempted by the countries of residence; under the present rules, 82% of overseas filers owe no U.S. tax and much of the tax paid relates to clear instances of double taxation. CBT is very complex and costly to administer for both the taxpayers and the IRS. CBT is grossly unfair as Americans abroad can pay taxes twice, while the U.S. provides them little or no services (education, infrastructure, healthcare, etc.)."

Is it really a good use of precious IRS resources to chase U.S. citizens abroad around the world?

Part G: Residence Based Taxation Will Bring In More Revenue for The United States Than The Current Citizenship-based taxation model

Residence based taxation would further the interests of the U.S.

As noted by American Citizens Abroad a system of Residence Based Taxation will:

http://waysandmeans.house.gov/uploadedfiles/american_citizens_abroad_wg_submission.pdf

•increase Treasury tax receipts by an estimated $30 billion over ten years whether RBT Is drafted as a voluntary program or the default tax system
• provide for fair, equitable and efficient taxation of Americans abroad;
•empower Americans abroad to sell U.S. goods and services overseas, boosting export performance, particularly of small and medium sized companies;
• create better employment opportunities for Americans, both domestically and internationally;
• align U.S. law with that of virtually all other nations;
• Liberate overseas citizens from a legislative straightjacket caused by the toxic combination of citizenship-based taxation, FATCA and FBAR reporting requirements

The prospect of more revenue was also noted in the Gordon Wasserman submission of April 10, 2013 where he notes that:

http://waysandmeans.house.gov/uploadedfiles/wassermann_wg_comments_redacted.pdf

"I pay less US tax than if I were taxed on a residence basis."

Part H: A New World - The Interaction of FATCA and Citizenship-Based Taxation

I wish to conclude with a consideration that deals with the viability of U.S. citizenship-based taxation on a prospective basis. In Parts A – G I have given reasons why I believe that citizenship-based taxation must be replaced with residence based taxation. I fully support the proposal of American Citizens Abroad.

http://waysandmeans.house.gov/uploadedfiles/american_citizens_abroad_wg_submission.pdf

Since 2009, citizenship-based taxation has been subjected to heightened scrutiny because of two events:

A. The war on offshore tax evasion; and
B. The coming implementation of FATCA ("Foreign Account Tax Compliance Act")

Leaving aside the issue of whether FATCA is good or bad policy, the implementation of FATCA makes the argument for repealing citizenship-based taxation more compelling.

FATCA is a U.S. law that the U.S. is attempting to impose on Canadian (and other foreign banks). FATCA is widely regarded as an attack on the sovereignty of other nations.

Effective January 1, 2014 FATCA would require Canadian banks (and those of other countries) to:

1. Take steps to actively identify for the IRS those persons who the U.S. deems to be "U.S. persons";
2. Turn those people's identities and bank account information over to the IRS.

FATCA was clearly motivated by the desire to find U.S. **resident taxpayers** who were using foreign banks to hide money from the IRS. It was not motivated by attempts on the part of the IRS to **seek out U.S. persons abroad**. Nevertheless, the "unintended consequence" is that FATCA will have far greater applicability to U.S. persons abroad.

FATCA is an attempt to force other countries to enforce the rules of "U.S. citizenship-based taxation on the world". As previously explained, the U.S. defines many people to be "U.S. Persons" who are residents and citizens of other countries. **Therefore, by assisting the U.S. in enforcing FATCA, the Government of Canada will be turning its own citizens over to the IRS and be eroding its own tax base. This is certain to generate resentment toward the United States. Does it make sense for the United States to generate resentment toward itself? Canada is the largest trading partner of the U.S.**

Therefore, what FATCA will do to Canada is:

1. Force the Canadian banks to identify those who the U.S. considers to be "U.S. persons" including Canadian citizens resident in Canada.
2. Force them to pay tax out of their Canadian assets and earnings to the IRS.

In other words, FATCA will force other countries to identify a subset of their residents who the U.S. feels it has the right to tax. Those taxes, once levied will be money that has been simply removed from the Canadian economy to satisfy the U.S. The War of 1812 ended without a clear victor. There is no reason why Canada (or any other country) should "pay tribute" to the U.S.

The use of FATCA to enforce extra-territorial taxation is intolerable. There is no way that the U.S. can continue it's practice of "citizenship-based (extra-territorial) taxation" in a FATCA world. It will amount to a "world wide levy" payable to the U.S., by any country that has U.S. citizens residing in it. This is the consequence of "citizenship-based taxation" - a system used to levy taxes on residents of other countries on income earned in those other countries. The United States does not consider the fact that U.S. citizens abroad may also be citizens of their country of residence (dual citizens) to be relevant. In a global world, this is a great mistake.

Part I – A Possible "Middle Ground"

There are two problems.

First, citizenship-based taxation as a general principle.

Second, the way that citizenship-based taxation is applied. It is one thing to tax U.S. citizens abroad. It is quite another to subject them exactly the same rules as U.S. residents. As Taxpayer Advocate as suggested, it is impossible for U.S. citizens abroad to comply with the current complexity.

Perhaps some modified form of citizenship-based taxation could be considered that would allow U.S. citizens abroad to pay something analogous to a "membership fee"

that would avoid the complexity and expense (and frankly impossibility of dealing with the rules as they currently stand). There would be no forms. Just payment of an annual fee to maintain the rights of U.S. citizenship.

It is clear that the current system is forcing U.S. citizens abroad to either return to the United States or renounce their U.S. citizenship.

In Conclusion:

The tax treatment of U.S. citizens abroad is an urgent problem. This point was reinforced by Heitor David Pinto in his March 18, 2013 submission.

http://waysandmeans.house.gov/uploadedfiles/pinto_wg_submission.pdf

"The unique US policy of taxation based on citizenship, the enormous complexity of US taxation of foreign income, and the draconian penalties associated with requirements to report foreign assets are creating a true nightmare in the lives of the estimated 6.8 million Americans living abroad and many of the 7.7 million recent legal immigrants living in the US. The toxic combination of these policies creates a situation where a very large number of individuals find themselves under the fear of confiscation of half of what they own, not for failing to pay taxes, but for unknowingly not reporting their assets to the US in confusing and repetitive forms. Some individuals are even unable to keep their bank accounts due to the onerous reporting requirements on both themselves and on their banks. The emotional stress and despair experienced by these individuals is so great that many of them see no alternative but to renounce their US citizenship or immigrant status (green card). In fact, the number of people who take such drastic measure has multiplied by a factor of 7.8 since 2009, when the enforcement of such policies began or increased. This appalling situation has also been thoroughly described by the National Taxpayer Advocate in her latest reports to Congress."

Even Nina Olsen of Taxpayer Advocate (the division of the IRS that exists to protect taxpayers) has noted that the complexity of U.S. tax laws is such that it is very difficult for U.S. citizens abroad to comply.

http://americansabroad.org/issues/taxation/tax-advocate-criticizes-irs/

Ms. Olsen and Mr. Pinto describe only the effects of citizenship-based taxation on U.S. citizens abroad. Citizenship-based taxation has huge implications for U.S. businesses trying to compete in a global world for reasons that include making it difficult to hire U.S. citizens. Furthermore, the citizenship-based taxation is and will continue to create diplomatic problems for the Unites States in at least two ways:

1. By subjecting residents and citizens of other countries to U.S. taxation; and
2. The use of FATCA to enforce U.S. citizenship-based taxation in other countries.

Citizenship-based taxation, as it is presently applied, is an appalling state of affairs which is not consistent with American values, traditions, fairness and commitment to justice! It has survived only because nobody has given it a good hard look. Recent IRS enforcement efforts treating U.S. citizens abroad as criminals and the implementation of FATCA have forced a reconsideration of how U.S. citizens abroad should be taxed. The answer is that the U.S. should join the rest of the world and adopt a system of residence based taxation.

1. There is NO good reason to retain “citizenship-based taxation”;
2. There are many good reasons to abolish “citizenship-based taxation” and join the rest of the world with the (or a similar) system of “residence based taxation” suggested by American Citizens Abroad.
3. A system of “residence based taxation” will benefit the United States as a country, it’s corporations and all of its citizens.

I fully support and urge this committee to adopt the proposal of American Citizens Abroad to abolish citizenship-based taxation and move to a system of residence based taxation.

If citizenship-based taxation (and the U.S. does NOT move to residence based taxation) is to be maintained then it must be modified.

U.S. citizens abroad do not live in the United States. U.S. citizens abroad pay taxes to their country of residence. The United States is a different country from countries where U.S. citizens abroad may reside. Hence, U.S. citizens abroad should not be forced to comply with the same rules that U.S. residents must comply with.

Thank you for your consideration.

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